

### REMARKS

Claims 2-5 were presented for examination. All were rejected as anticipated. Herein, Applicants request entry of an amendment, reconsideration, and withdrawal of the "Final" status of the rejection.

"The Finality" of the Office Action is premature and should be withdrawn.

The Office Action states that it has properly been made final because "Applicants' amendment necessitated the new ground(s) of rejection." This, however, is not correct. Original claim 1 and new claim 2 are both set forth below:

*Claim 1: (Original)*

A method for reducing bandwidth utilization in a system for distributing digital continuous media information from one or more servers, where users of the system are connected to a shared continuous media buffer and the buffer is shared amongst the users based on usage, consisting of the steps of:

- i. The user requesting a continuous media stream from the server;
- ii. The server periodically sending encoded packets to the user representing portions of the media stream;
- iii. A buffer shared by multiple users capturing the packet into one or buffers for redistribution to the user.
- iv. Servicing later requests arriving within a bounded interval for the same buffer.

*Claim 2:*

A method for reducing bandwidth utilization in a system for distributing digital continuous media information from one or more servers, where users of the system are connected to a shared continuous media buffer, comprising the steps of:

- a first user requesting a continuous media stream from a server;
- the server periodically sending packets to the first user representing portions of the media stream;
- the shared continuous media buffer capturing the encoded packets sent by the server, and redistributing them to the first user;
- a second user requesting the continuous media stream from the server, wherein the request is made at a time when the

continuous media buffer no longer retains first packets from the stream, representing a missed portion of the stream;  
sending a burst of packets to the second user representing the missed portion of the stream, wherein the second user catches up to the buffer; and  
distributing the encoded packets representing the stream from the shared buffer after the second user catches up to the shared buffer.

Clearly, claim 2 is closely related to claim 1 and though not dependent therefrom, is within the ambit of the 3 claim. Moreover, at the time of the previous Office Action Hofmann et al. had already been cited, but not applied, by the Examiner. The Examiner most certainly could have applied Hofmann at that time, which would have afforded Applicants the opportunity to address Hofmann in a response to a non-final rejection.

#### Claim Rejections Under 35 U.S.C. §102

Claims 2-5 have been rejected under 35 U.S.C. §102(b) as anticipated by Hofmann. This rejection is not well founded and should be withdrawn.

A rejection under §102(b) requires that the reference had been published more than a year before Applicants' filing date. In the present instance, this application claims the benefit of Provisional Application No. 60/199,567, filed April 25, 2000. However, the Office, in citing Hofmann, identifies it only as an "April, 1999" publication. Firstly, it is unclear that Hofmann was, in fact, published in April, 1999. The basis for that asserted publication date is not identified, although the article does bear a header containing within it a code "990409-04TM" and Applicants assume the Examiner interprets this code as a reference to April, 1999. Secondly, however, even if that be true, publication in April, 1999 may or may not have occurred more than one year before April 25, 2000. Assuming that the article was, in fact, published in April, 1999, it might have been published on April 26, April 27, etc. It need not have been published before April 25. Therefore, on its face, there is insufficient evidence to establish a *prima facie* basis for this rejection.

Moreover, it is well known that publication dates indicated on documents are often incorrect, in the sense that they do not represent true publication dates for purposes of applying §102(b). It is the actual date of publication that matters under the statute, not the face date on a periodical or similar kind of publication. The Hofmann article appears to have been published by a private

organization and its actual date of publication cannot readily be established by Applicants, so Applicants challenge the Office to prove it bars their application.

#### Amendments

Additionally, to further advance the prosecution of this application and to expedite allowance, Applicants request minor amendments to claims 2 and 3, while reserving the right to prosecute unamended claims, should Applicants choose to do so, in a continuation or an RCE prosecution. The amendments both clarify the claims and supply proper antecedents which previously were missing. They also narrow claims 2 and 3 by adding “pre-caching” to the previously defined methods. Pre-caching is discussed in the specification at pages 26 to 32. As stated therein, by delaying some clients’ service requests, it is possible to increase the probability that another such request will come in from another client, that could be folded into service of the equivalent delayed request.

This is not the same as either situation illustrated in FIG. 3 of Hofmann. As claimed herein, a first client receives a signal delayed by a first cache while a second client receives a signal delayed by a first cache plus a second cache. Hofmann, as understood by Applicants, shows only the second client receiving packets delayed by both caches. Thus, Applicants may be able to reduce the number of later requesters who need a “catch up” “patch,” as compared with Hofmann.

#### After Final Consideration

Entry of Applicants’ amendments is proper under 37 C.F.R. §1.116 because Hofmann et al. was first applied in the most recent Office Action (though it had been previously available to be applied) and Applicants thus could not foresee the need to address Hofmann in the previous response. Further these amendments will (1) clarify the claims; (2) present allowable subject matter; and (3) impose no new burden on the Office, such as additional searching.

**CONCLUSION**

In view of the foregoing remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's representatives at the telephone number listed below.

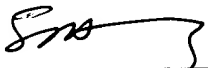
If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time.

If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

A Notice of Appeal is enclosed and should be entered if Finality is maintained and a Notice of Allowance will not be forthcoming.

Dated: March 15, 2006

Respectfully submitted,

By:   
\_\_\_\_\_  
Steven J. Henry  
Registration No.: 27,900  
WOLF, GREENFIELD & SACKS, P.C.  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
(617) 646-8000